

Entered on Docket  
 April 09, 2009  
 GLORIA L. FRANKLIN, CLERK  
 U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA



Signed: April 09, 2009

EDWARD D. JELLEN  
 U.S. Bankruptcy Judge

ERIC A. NYBERG, ESQ.  
 (Bar No. 131105)  
 CHARLES N. BENDES, ESQ.  
 (Bar No. 70126)  
 CHRIS D. KUHNER, ESQ.  
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Attorneys for A.F. Evans Company, Inc., Debtor

UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re  
 A.F. EVANS COMPANY, INC.,  
 Debtor.

Case No. 09-41727 EDJ  
 Chapter 11  
 ORDER GRANTING MOTION  
 TO SELL AND ASSIGN  
 PARTNERSHIP INTEREST

Date: April 2, 2009  
 Time: 2:30 p.m.  
 Place: Courtroom 215

The Motion to Sell and Assign Partnership ("the Motion") filed by A.F. Evans Company, Inc., Debtor and Debtor in Possession in the above-referenced Chapter 11 bankruptcy case ("the Debtor"), came on for a hearing in the courtroom of the Honorable Edward D. Jellen at the above date and time. All appearances were made on the record. The court having considered the Motion, the objection filed by MMA Pioneer Park Plaza, LLC's f/k/a Lend Lease Pioneer Plaza, LLC's Opposition to A.F. Evans Company's Motion to Sell and Assign Partnership Interest and the Objection of the Official Committee of Unsecured Creditors to Debtor's Motion to Sell and Assign Partnership Interest and good cause appearing therefor;

Order on Motion to Sell

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1           **IT IS HEREBY ORDERED** that the Motion is granted to the extent it pertains  
2 to the sale of the Debtor's interests in AFE-Pioneer Associates, LP ("AFE-Pioneer") and  
3 the Debtor is authorized to sell its interest in AFE-Pioneer to the Reliant Group pursuant to  
4 the terms set forth in the Motion subject to any and all of MMA Pioneer Park Plaza LLC's  
5 f/k/a Lend Lease Pioneer Plaza, LLC's consent rights that may exist by contract or  
6 operation of law.

7 .  
8  
9           **IT IS FURTHER ORDERED** that their First Amended and Restated Agreement  
10 of their Limited Partnership related to AFE-Pioneer shall, upon closing, be assumed by the  
11 Debtor then assigned to Buyer pursuant to 11 U.S.C. §365. The assumption and  
12 assignment of AFE-Pioneer is subject to any and all of MMA Pioneer Park Plaza LLC's  
13 f/k/a Lend Lease Pioneer Plaza, LLC's consent rights that may exist by contract or  
14 operation of law.

15  
16           **IT IS FURTHER ORDERED** that the lien of City National Bank ("CNB") shall  
17 attach to the sale proceeds to the same extent and priority as CNB's prepetition security  
18 interests in the Debtor's interests in AFE-Pioneer. Prior to April 24, 2009, the Debtor shall  
19 retain and shall not distribute or disburse to CNB or to any other party that 87.5% portion  
20 of the sale proceeds to which CNB would be entitled under the terms of the Stipulation  
21 Regarding Cash Collateral and Adequate Protection between the Debtor and CNB. Unless  
22 the Official Committee of Unsecured Creditors has filed a pleading in this case by April  
23 23, 2009, asserting a defect in CNB's lien rights in the Debtor's interests in AFE-Pioneer  
24 (such assertion to be based on the merits and not on the basis of a lack of time or lack of  
25 information), then on April 24, 2009 (or, if later, promptly upon the Debtor's receipt of  
26 sale proceeds), the Debtor shall remit 87.5% of the sale proceeds to CNB. In the event the  
27 Committee asserts a defect in CNB's lien rights, then, the sole grounds upon which all or  
28 any portion of the 87.5% portion of sale proceeds may ultimately be withheld from CNB

1 shall be on the basis of an alleged defect in CNB's lien rights and not on alternative  
2 grounds such as that CNB is adequately protected without receiving such proceeds.

3  
4 **IT IS FURTHER ORDERED** that the Motion is continued for further hearing  
5 on April 23, 2009, at 2:30 p.m., to the extent the Motion relates to the Debtor's sale of its  
6 interests in Bigby Associates, LP and Charter Oaks Associates, LP.

7  
8  
9 Approved as to form:

10 Todd Toral /s/

11 Todd Toral, Esq.

12 Attorneys for Creditor

13 MMA Pioneer Park Plaza, LLC f/k/a

14 Lend Lease Pioneer Plaza, LLC

15 Maxim B. Litvak /s/

16 Maxim B. Litvak, Esq.

17 Pachulski, Stang, Ziehl & Jones

18 Attorneys for Official Unsecured Creditors Committee

19 T. Scott Bucey /s/

20 T. Scott Bucey, Esq.

21 PeplerMastromonaco, LLP

22 Attorneys for City National Bank

23  
24 **\*\*\*END OF ORDER\*\*\***  
25  
26  
27  
28

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